IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.06.2006

CORAM:

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE M.JEYAPAUL

C.A.NO.197 OF 2004

Mani @ Manikandan .. Appellant (Accused)

vs.

State rep by
The Inspector of Police,
Vellore North Police Station,
Erode District. .. Respondent (Complainant)

Prayer: The Criminal Appeal has been filed under section 374 of Criminal Procedure Code against the judgment passed by the learned Principal Sessions Judge, Erode in S.C.No.181/2002 dated 20.06.2003.

For Appellant : Mr.T.R.Ravi

For Respondent: Mr.N.R.Elango,APP

JUDGMENT

(Judgment of the Court was delivered by M.JEYAPAUL, J.)

The accused, who was convicted for offence under Section 302 IPC in S.C.No.181/2002 on the file of the Principal Sessions Judge, Erode, has preferred the present Appeal. The learned Principal Sessions Judge convicted the accused for offence under Section 302 IPC and sentence him to undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo RI for a further period of one year.

2.The charge as against the accused is that on 17.5.2002 at about 00.30 hrs at Tiruvalluvar Nagar, Erode, due to previous enmity the accused attacked Muraleetharan/deceased, when he was sleeping on a cot in front of his house, with wooden reaper with an intention to cause his death and thereby committed the offence punishable under Section 302 IPC.

3.As many as 21 witnesses were examined besides marking 20 documents and 13 material objects on the side of the prosecution. No evidence either oral or documentary was let in on the side of the defence.

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4.The brief text of the case of the prosecution as spoken to by the witnesses is as follows:

i) Vasudevan/P.W.1 is the father of the deceased Muraleedaran and Krishnan/P.W.5. Vellaiyan/P.W.2 was a thick friend of the deceased. Vellaiyan/P.W.2 and Raghu/P.W.7 are the sons of P.W.3/Mariyammal. P.W.3 and P.W.4 are the neighbours of Vasudevan/P.W.1.

ii) Raghu/P.W.7 was allotted with a house by the Housing Board. About one year ago, Vellaiyan/P.W.2 took a lady from a cenima theater to the house, which was allotted to his brother Raghu/P.W.7. The said conduct of Vellaiyan/P.W.2 was seriously objected to by the accused/Manikandan, who was residing in the downstair of the said house and the same resulted in a quarrel between them. Mariyammal/P.W.3, who is the mother of Vellaiyan/P.W.2, went to the house of the accused/Manikandan and expressed her displeasure over the quarrel picked up by Manikandan/accused with her son Vellaiyan/P.W.2. The accused beat Mariyammal/P.W.3 annoyed of her intervention. The accused proclaimed that he will do away with the life of Vellaiyan/P.W.2 and the deceased/Muraleetharan.

iii) Vasudevan/P.W.1 was working in Balaji Hotel in Erode. On 16.5.2002 at about 12.00 pm, when he was proceeding towards his house after purchasing materials for the Hotel, the accused was proceeding just in front of him with a wooden reaper in his hand. As the accused was proceeding towards his house, P.W.1 followed him at a faster phase. At that time, Muraleetharan/deceased was sleeping along with his younger brother Krishnan/P.W.5 on a cot in front of his house. The accused beat Muraleetharan on his head with wooden reaper/M.O.1. Krishnan/P.W.5 woke up on hearing some noise and found the accused beating his brother Muraleetharan. Vellaiyan/P.W.2, Mariyammal/P.W.3 and Subramani/P.W.4, who woke up on hearing some noise which emanated from the house of Vasudevan/P.W.1, witnessed the accused beating on the head of Muraleetharan with wooden reaper. In spite of the efforts taken by the witnesses to catch hold of the accused, the accused sped way from the scene of occurrence.

iv) Vasudevan/P.W.1 and Vellaiyan/P.W.2 took the injured Muralidaran in an Auto to the Government Hospital at Erode. Dr.Balakrishnan/P.W.12 examined Muraleetharan, who was brought to the hospital by his father at about 1.05 hrs on 17.5.2002 and pronounced the death of Muraleetharan. He sent death intimation/Ex.P.8 to the Police Station.

v) Thereafter, P.W.1 went to the Erode North Police Station at about 1.30 hrs on 17.5.2002 and gave a statement/Ex.P.1 to the Sub-Inspector of Police/P.W.19. P.W.19 registered a case in

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Cr.No.205/2002 and prepared printed FIR/Ex.P.18. He dispatched the original FIR to the learned Judicial Magistrate and copies thereof to the higher officials concerned.

vi) The Inspector of Police/P.W.20, who received a copy of the FIR at 2.15 hrs on 17.5.2002, rushed to the scene of occurrence and prepared observation mahazar/Ex.P.3 in the presence of Sengottaiyan/P.W.8 and he also drew rough sketch/Ex.P.19 reflecting the scene of occurrence. The blood stained earth/M.O.5, sample earth/M.O.6, blood stained cot/M.O.2 and its leg portion/M.O.3 were recovered under seizure mahazar/Ex.P.2, in the presence of the above said witness. With the assistance of Selvam/P.W.9, the occurrence place was also photographed. P.W.20 also recovered blood stained shirt/M.O.4 from Krishnan/P.W.5 under Ex.P.4 in the presence of Sengottaiyan/P.W.8. P.W.20 also conducted inquest on the dead body of Muraleetharan at Government Hospital, Erode, in the presence of panchayators and prepared inquest report/Ex.P.20. He examined the witnesses who were present there and recorded their statement. He sent a requisition/Ex.P.6 through the Grade-I Constable/P.W.17 for the purpose of conducting postmortem examination on the dead body of Muraleetharan.

vii) Dr.M.L.K.Rajan/P.W.10, on receipt of the aforesaid requisition, conducted postmortem examination on the dead body of Muraleetharan at 11.45 am on 17.5.2002 and he found the following injuries and other features on the body of Muraleetharan/deceased:

"EXTERNL INJURIES:-

1. crush injury seen on left side eyebrow 7cm x 2cm x upto brain matter.

2.crushed injury seen ont he left front of parietal region of the skull 4 ½ cm x 2cm X bone depth.

INTERNAL EXAMINATION:-

OPENING OF THORAX:-

Heart: Weight - 200 gms. Chembers - Empty. Pale.
Right Lung - 350 gms. Pale.
Left Lung - 300 gms. Pale.
Stomach: Undigested Rice particles present about 200 ml.
Liver: 1300 gms. Pale.
Spleen: 1000 gms. Pale.
Kidneys: Both 150 gms. Pale.

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Hyoid Bone: Intact.
Bladder : Empty.

OPENING OF THE HEAD:-

Left side Parietal region of skull fractured. Just above front of the forehead to lower end of Parietal region of left side skull. Size 12 cm x 4cm x upto Brain matter.

BRAIN:- Wt-300 gms. Left cerebral Brain particles, and membranes, Blood Vessels are crushed. Clotted blood seen.

SPINAL CORD: Intact."

On completion of the postmortem examination, he has opined in his postmortem certificate/Ex.P.5 that the deceased appeared to have died of Cerebral Haemorrhage and shock due to the head injury, about 10.00 to 14.00 hrs prior to autopsy.

viii) After the postmortem examination was over, the personal apparels found on the dead body of Muraleetharan viz. M.O.10 to 13 were recovered by P.W.17 and the same were entrusted to P.W.20 for the purpose of further investigation.

ix) On 18.5.2002 at about 2.00 pm, the accused was arrested at Erode Sathyamangalam road in the presence of P.Srirangan/P.W.13, who is the Village Administrative Officer and one Swaminathan, by the Inspector of Police/P.W.20. The accused gave a voluntary confession statement in the presence of P.W.13/P.Srirangan. On the basis of the admissible portion found in the confession statement of the accused, which is marked as Ex.P.9, wooden reaper/M.O.1 and shirt/M.O.9 were recovered near a thorny bush underneath an overbridge in Roja Nagar. As the accused was found with some injuries, he was sent to the Government Hospital with a Police Medical Memo for treatment. Dr.Kannan/P.W.11 admitted the accused for treatment. The accused informed P.W.11 that he sustained injury on account of a fall on 17.5.2002 at about 00.30 hrs at Lakshmi theater, Agraharam. P.W.11 found a contusion over the right shoulder measuring 8cm x 5cm x 3cm. The ultimate opinion of the said Doctor, which is found in the accident register/Ex.P.7, is that the dislocation of right shoulder of the accused was grievous in nature.

x) The accused, thereafter, was remanded in judicial custody by the investigating officer/P.W.20, who paid a visit to the Government Hospital, where the accused was taking treatment. P.W.12/the Inspector of Police, who took up the case for further investigation in this matter, having examined the other witnesses in this case, sent a requisition to the Judicial Magistrate to dispatch the

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material objects for chemical examination and laid the final report as against the accused under Section 302 IPC on 30.05.2002.

5. The incriminating portion found in the evidence adduced on the side of the prosecution was culled out and put to the accused in the form of questionnaire under Section 313 of Cr.P.C. The accused responded that there was a quarrel between himself and the deceased and Vellaiyan/P.W.2 in front of his house at 11.00 p.m. on 16.2.2002 and the deceased attacked him with wooden reaper on his right shoulder and having retrieved the said weapon, he attacked Muraleetharan/deceased on his head.

6. The learned counsel for the appellant would submit that the prosecution has failed to convincingly explain the grievous injury found on the right shoulder of the accused. The very fact that the accused has sustained such a grievous injury would speak volume about the suppression of the fact that the accused had to react having received some injury on his person. The accused had reacted in such a fashion after he received a blow from the deceased. He would further submit that as all the ocular witnesses have suppressed the above factum, the whole case of the prosecution will have to be disbelieved. He further contends that at any rate, the accused would not have intended to cause the death of Muraleetharan/deceased as he has used the weapon only after he retrieved the weapon and attacked Muraleetharan/deceased.

7.The learned Additional Public Prosecutor would submit that the ocular testimony of P.W.1 to 5 would establish the case of the prosecution that it was only the accused, who attacked the deceased/Muraleetharan and caused his death. It is his submission that the fatal blow, which caused the death almost instantaneously, would speak about the vehemence with which the weapon was handled by the accused. It is his further submission that the trial Court, rightly placing reliance on the evidence of ocular witnesses, has convicted the accused for the offence as mentioned above, which does not warrant interference.

8. This Court finds that there is no dispute with regard to the fact that there had been frequent quarrels between the accused party and the prosecution party for about one long year prior to the occurrence. P.W.1 to P.W.5 and P.W.7 would state that Vellaiyan/P.W.2 took a woman straight from the Cinema theater to the house of Raghu/P.W.7, whereunder the accused was residing. Such an immoral activity of Vellaiyan/P.W.2 had given raise to a quarrel between the prosecution party and the accused party. P.W.1 to P.W.5 would also speak to the fact that the accused, who was residing in the down stairs of the house of P.W.7 allotted by the Housing Board, had earlier attacked not only Vellaiyan/P.W.2 but also his mother Mayyriammal/P.W.3 as they objected to the attitude of the accused blowing the issue out of proportion.

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9. It is found from the evidence of P.W.1 to 5 that on the day of occurrence at about 5.00 p.m. there was a quarrel between Vellaiyan/P.W.2 and the deceased on one side and the accused on the other side. Ofcourse, the witnesses would state that the accused went away proclaiming that he would do away with the life of not only Vellaiyan/P.W.2 but also Muraleethanran/deceased. The accused admits that he attacked the deceased and caused injury. For such reaction, his explanation is that he had to attack the deceased as he received a lethal injury at the hands of the deceased with the very same reaper/M.O.1. The prosecution has not convincingly explained as to how the accused received such a serious injury of dislocation of right shoulder. None of the ocular witnesses has spoken as to how such an injury was caused to the accused. The Doctor Kannan/P.W.11, who treated him and issued a copy of the accident register/Ex.P.7 has detailed such a grievous injury. The case of the prosecution is that the accused voluntarily informed the Doctor that he sustained injury when he fell down on the ground. We are not inclined to believe the cock and bull story of the prosecution that such a dislocation of right shoulder was caused by a mere fall on the ground.

10. The accused has stated, when he was questioned under Section 313 of Cr.P.C, that he had to attack the deceased retrieving the weapon from the deceased in order to save his life. Such an explanation given by the accused is found to be quite acceptable to us. In view of the seriousness of the injury sustained by the accused, the explanation offered by the prosecution that a fall on the ground had caused such an injury on the accused stands rejected by us.

11. We are now inclined to believe the version of the accused that the accused attacked the deceased only after Muraleetharan/deceased attacked him. Under such circumstances, the question of attacking Muraleetharan/deceased, when he was fast asleep on a cot does not appear to be believable. P.W.1 to P.W.5 would have witnessed the occurrence, but they have come out with embellishment that the accused attacked the deceased when he was sleeping on a cot. As rightly defended by the learned counsel for the appellant, in the aftermath of the quarrel preceding the occurrence the deceased would have attacked the accused and thereafter, the accused would have given a fitting reply to the deceased.

12. Further, the Postmortem Doctor-P.W.10, of course, has stated in his postmortem Certificate/Ex.P.35 that the deceased sustained two injuries, which were found correlated to each other. P.W.2 has categorically deposed that the accused delivered only one blow with the reaper on the head of the deceased. The single blow delivered by the accused would have caused both the interconnected injuries found in the postmortem certificate/Ex.P.5.

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13. We are inclined to accept the version of the accused that the occurrence took place only when the accused first launched a virulent attack on the accused in the aftermath of a quarrel. Then the question arises as to whether the accused exercised his right of private defence as contemplated under Section 96 of IPC.

14. As already discussed, the deceased sustained only one injury and the accused has also sustained equally one injury. We find that the accused would not have used any other weapon except the weapon retrieved from the person of the deceased. If the deceased had not been relieved of the reaper, which he possessed and matchingly paid him back in his own coin the accused would have received a deadly blow and succumbed to his injury. In order to save his life, the accused had defended himself and used only the force required to ward off the attack launched against him.

15. At this juncture, it is also useful to see Exception 2 to section 300 IPC, which reads as follows:

> "Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person of property exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence."

We find that the accused had excised his right of private defence only to the extent necessitated and that he had not exceeded the right of private defence given to him under law. When he thus retaliated to save himself from the attack launched by Muraleetharan/deceased, then the accused is entitled to the right of private defence under Section 96 IPC. As per Section 96 IPC nothing is an offence which is done in the exercise of the right of private defence.

16. The learned Additional Public Prosecutor would submit that the right of private defence set up by the accused would have to be established by him in this case. The accused has not come out with any evidence on his side to prove that he attacked the deceased in self defence it is further argued. It has been categorically held by the Supreme Court in a case reported in AIR 2003 SUPREME COURT 976 (Rizan vs. State of Chhatisgarh) as follows:

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" An accused taking the plea of the right of private defence is not required to call evidence, he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence and not a question of the accused discharging any burden. Where the right of private defence is pleaded the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record."

The defence has consistently set up the plea of self-defence right from the beginning. Infact, when P.W.1 and P.W.2 were cross-examined, it has been specifically put to them that the accused had to attack the deceased only to save his life, but ofcourse the witnesses have denied such a reaction on the part of the accused as pleaded by him.

17. A suggestion has been put to P.W.11/Dr.Kannan during the course of the cross-examination to the effect that he recorded only the version of the police that the accused sustained injury on account of a fall on the ground and not that of the accused, who had come out with a version that the deceased beat him first and caused such an injury to the accused. But he would admit in cross-examination that the injury found on the accused would have been caused by a weapon like reaper and that it was not possible to sustain such injury by a fall.

18. The injury found in the copy of the accident register/ Ex.P.7 is also found to be grievous in nature. We have already held that such an injury would not have been caused on account of a mere fall on the ground. Taking into account the defence consistently set up by the accused and the nature of the injury sustained by him, we find that the accused would have definitely delivered a blow on the deceased only after receiving an attack from the deceased in order to save his life. In view of the above facts and circumstances, we could draw safely that the accused had attacked only in private defence to save himself and caused injury to the deceased, which unfortunately culminated in the death of the deceased. The accused need not separately let in any evidence when the prosecution evidence

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available on record suggests that the accused attacked the deceased to defend himself, as held in the authority cited hereinabove.

19. As already held, the accused, who has attacked the deceased in exercise of the right of private defence without exceeding the limit prescribed by law is entitled to acquittal as his attack which culminated in death does not amount to any offence under any of the provisions of the Indian Penal Code. The trial Court having completely ignored the lethal injury found on the person of the accused and the other materials, which would sactify the right of self-defence exercised by the accused, has come to a wrong conclusion that it was a case of murder.

20. In the result, the Judgment and conviction passed in S.C.182/2002, dated 20.06.2003, on the file of the Principal Sessions Court, Erode, is set aside and the accused is acquitted of the charge under section 302 IPC. The accused is directed to be released forthwith, if his detention is not required in connection with any other case.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Sessions Judge, The Court of Session,Erode.
2.The Superintendent, Central Prison, Coimbatore.
[In duplicate for Communication to the Accused]
3.The Public Prosecutor, High Court, Madras.
4.The Director General of Police, Mylapore,Chennai.
5.The District Collector, Erode.
6.The Inspector of Police, Erode, North Police Station,Erode.

+ one cc to Mr.T.R.Ravi, Advocate Sr.No.27453.

VC (CO)
RSM/13.7.2006

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